UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FIBER-SHIELD INDUSTRIES, INC. **Plaintiff,** **v.** **DETAIL KING LP** **Defendant.**	**Case No.:** **COMPLAINT** **AND** **DEMAND FOR JURY TRIAL**

NOW COMES Plaintiff, Fiber-Shield Industries, Inc., by and through its undersigned attorneys, INTELLECTULAW, The Law Offices of P.B. Tufariello, P.C., on its behalf and for its Complaint against the above named Defendant Detail King LP, alleges and avers as follows:

PARTIES

1. Plaintiff, Fiber-Shield Industries, Inc. (hereinafter "Fiber-Shield"), is a corporation duly organized and existing under the laws of the State of New York, having a regular and established place of business at 26 Old Dock Road, Yaphank, New York, 11980.

2. Upon information and belief, Defendant Detail King LP is a limited partnership duly organized and existing under the laws of the state of Pennsylvania, having a regular and established place of business at 947-A Old Frankstown Road, Pittsburgh, PA 15239.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction of this action on the following basis:

   a. Under 28 U.S.C. § 1331 since this action arises under the Laws of the United States, *i.e.*, the Lanham Act §43(a), 15 U.S.C. § 1125 *et seq.*;

   b. Under 28 U.S.C. § 1338 since this action arises under the Trademark and Unfair Competition Laws of the United States, *i.e.*, the Lanham Act §43(a), 15 U.S.C. §

1125 *et. seq.* ;

c. Under 15 U.S.C. § 1121 since this action involves questions arising under the Trademark Laws of the United States, Lanham Act §43(a), 15 U.S.C. §§ 1114, 1125 *et. seq.*; and

d. Under 28 U.S.C. § 1367(a) since this action alleges state law violations that are part of the same case or controversy as those claims arising under the laws of the United States.

4. Venue is proper in the United States District Court for the Eastern District of New York, pursuant to 28 U.S.C. § 1391(b) and (c) since a substantial portion of the harm sought to be avoided, and a substantial part of the events and omissions giving rise to the claims asserted herein, occurred within this district.

FACTUAL BACKGROUND

I. Plaintiff's FIBER-SHIELD trademark

5. Since its inception in 1981, Fiber-Shield specializes in the manufacture, development, marketing and sale of innovative protective formulations for fabric, carpet, leather, suede, wood, concrete, masonry materials, automotive painted surfaces, glass and fiberglass.

6. Fiber-Shield promotes, markets and advertises its products in among other things, its website www.fiber-shield.com .

7. Fiber-Shield's products are also promoted, marketed and advertised in third party websites such as www.allcleancarpetinc.com, www.fibercarecleaning.com, and www.mwifibershield.com.

8. Among other products, Fiber-Shield has developed and manufactured FIBER-SHIELD® fluoro-polymers, i.e. chemicals that are water resistant, dirt resistant, stain resistant and oil resistant, for use in industrial, commercial and residential applications.

9. Fiber-shield is the owner of all rights, title and interest in U.S. Registration No. 1,429,690 for the mark FIBER-SHIELD for chemicals, namely water resistant, dirt resistant, stain

resistant, and oil resistant treatment preparations for industrial and commercial use in International Class 6. A true and accurate copy Fiber-Shield's U.S. Registration No. 1,429,690 for the FIBER-SHIELD mark is annexed hereto as **Exhibit 1** (hereinafter "the Trademark").

10. U.S. Registration No. 1,429,690 for the Trademark FIBER-SHIELD issued on February 24, 1987.

11. Fiber-Shield has been using the Trademark FIBER-SHIELD in inter-state commerce in connection with chemicals, namely water resistant, dirt resistant, stain resistant, and oil resistant treatment preparations for industrial and commercial use in International Class 6, since at least as early as June 6, 1981.

12. U.S. Registration No. 1,429,690 for the Trademark FIBER-SHIELD is incontestible.

13. As a result of Fiber-Shield's use and promotion of the Trademark in interstate commerce since June 1981, the Trademark FIBER-SHIELD has acquired considerable value.

14. As a result of Fiber-Shield's use and promotion of the Trademark FIBER-SHIELD in interstate commerce since June 1981, the Trademark is well-known to the relevant consuming public and trade.

15. As a result of the Fiber-Shield's use and promotion of the Trademark in interstate commerce since June 1981, the Trademark FIBER-SHIELD identifies and distinguishes Fiber-Shield as a source for high quality goods with which the Trademark is being used.

II. Defendant's Acts.

16. Upon information and belief, Defendant Detail King was established in 1999 in Pittsburgh PA by auto detailing industry executive Nick Vacco.

17. Upon information and belief Defendant Detail King provides auto detailing supplies, equipment and training.

18. Upon information and belief Defendant Detail King is the owner of all rights, title and interest in the website www.detailking.com

19. Upon information and belief, Defendant Detail King, by and through among other things its website www.detailkiing.com, offers car detailing products and business opportunity start-up packages to individuals and entities nationwide.

20. Upon information and belief, some of the car detailing products that Defendant Detail King offers through its website www.detailking.com to individuals and entities nationwide, include Interior Detailing Chemicals, namely soaps and cleaners.

21. Upon information and belief, Defendant Detail King's Interior Detailing Chemicals includes a water based fabric protectant bearing the trademark FIBER SHIELD and having the Item No.: INTFIBSLDG. A true and accurate copy of an excerpt of Defendant Detail King's website www.detailking.com showing Defendant Detail King's FIBER SHIELD-WATER BASED FABRIC PROTECTANT offered for sale is annexed hereto as **Exhibit 2**.

22. Upon information and belief, Detail King's FIBER SHIELD-WATER BASED FABRIC PROTECTANT is an odorless, water-based fluorochemical protectant that forms a protective barrier against stains and spills.

23. Upon information and belief, Detail King's FIBER SHIELD-WATER BASED FABRIC PROTECTANT is available in both 1 quart and 1 Gallon sizes, which can be shipped and sold even in the State of California.

24. Upon information and belief, Detail King's FIBER SHIELD-WATER BASED FABRIC PROTECTANT's safety data sheet can be accessed through Defendant Detail King's website www.detailking.com. A true and accurate copy of Defendant Detail King's Safety Data Sheet for its FIBER SHIELD-WATER BASED FABRIC PROTECTANT, as accessed from such website, is annexed hereto as **Exhibit 3**.

25. Upon information and belief, both Plaintiff Fiber-Shield and Defendant frequent the same trade shows, including but not limited to the AAPEX automotive, aftermarket products expo in Las Vegas, that take place every year, at the end of October through the beginning of November.

26. As a result of Plaintiff Fiber-Shield's incontestible U.S. Registration No. 1,429,690 for the mark FIBER-SHIELD, Defendant Detail King had constructive notice of the Trademark FIBER-SHIELD, if not actual notice from the tradeshows it and Plaintiff Fiber-Shield frequent.

27. Defendant Detail King's use of the mark FIBER SHIELD in connection with water-based fluorochemical protectants that form a protective barrier against stains and spills is confusingly similar to Fiber-Shield's products sold under its Trademark FIBER-SHIELD.

28. Plaintiff Fiber-Shield has never authorized or consented to Defendant's Detail King's use of the Trademark FIBER-SHIELD, or any simulation, reproduction, copy, counterfeit or colorable imitation thereof.

29. Defendant's continuous use of the infringing mark FIBER SHIELD or FIBRE SHIELD, in connection with water-based fluorochemical protectants that form a protective barrier against stains and spills has caused and will continue to cause not only a likelihood of confusion, but also actual confusion. Such confusion will irreparably injure Plaintiff Fiber-Shield's goodwill and reputation in the Trademark.

COUNT I

Trademark Infringement And Unfair Competition Under The Lanham Act Pursuant to 15 U.S.C. § 1114

30. Plaintiff Fiber-Shield repeats, re-alleges and incorporates by reference the allegations contained in paragraphs 1-29 of the Complaint as though more fully set forth herein.

31. Defendant's conduct, as described herein, including its current use of the mark "FIBER SHIELD", constitutes trademark infringement and unfair competition because it is likely to cause confusion, mistake and deception as to the affiliation, connection and association between Defendant's products and Plaintiff Fiber-Shield's products, in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114(1).

32. As a direct and proximate result of Defendant's wrongful conduct, Defendant has caused Plaintiff Fiber-Shield irreparable harm and injury.

33. Defendant's acts of infringement and unfair competition are knowing and willful.

34. Unless Defendant is enjoined from its wrongful conduct, Plaintiff Fiber-Shield will suffer further irreparable injury and harm, for which it has no adequate remedy at law.

COUNT II

Federal Unfair Competition Pursuant to 15 U.S.C. § 1125(a)
(False Designation of Origin)

35. Plaintiff Fiber-Shield repeats, re-alleges and incorporates by reference the allegations contained in paragraphs 1-34 of the Complaint as though more fully set forth herein.

36. Defendant's conduct, as described herein, including its current use of the mark "FIBER SHIELD", constitutes federal unfair competition because it falsely designates the origin as to the affiliation, connection and association between Defendant's products and Plaintiff Fiber-Shield's products, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

37. As a direct and proximate result of Defendant's wrongful conduct, Defendant has caused Plaintiff Fiber-Shield irreparable harm and injury.

38. Defendant's acts of infringement and unfair competition are knowing and willful.

39. Unless Defendant is enjoined from its wrongful conduct, Plaintiff Fiber-Shield will suffer further irreparable injury and harm, for which it has no adequate remedy at law.

COUNT III

Federal Unfair Competition Pursuant to 15 U.S.C. § 1125(a)
(Confusion, Mistake and/or Deception)

40. Plaintiff Fiber-Shield repeats, re-alleges and incorporates by reference the allegations contained in paragraphs 1-39 of the Complaint as though fully set forth herein.

41. Defendant's conduct, as described herein, including its current use of the mark "FIBER-SHIELD", constitutes federal unfair competition because it causes the likelihood of

confusion, mistake and/or deception as to the affiliation, connection and association between Defendant's products and Plaintiff Fiber-Shield's products, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

42. As a direct and proximate result of Defendant's wrongful conduct, Defendant has caused Plaintiff Fiber-Shield irreparable harm and injury.

43. Defendant's acts of infringement and unfair competition are knowing and willful.

44. Unless Defendant is enjoined from its wrongful conduct, Plaintiff Fiber-Shield will suffer further irreparable injury and harm, for which it has no adequate remedy at law.

COUNT IV

Infringement Pursuant to New York State Common Law, New York State Trademark Law and New York State Unfair Competition Laws

45. Plaintiff Fiber-Shield repeats, re-alleges and incorporates by reference the allegations contained in paragraphs 1-44 of the Complaint as though fully set forth herein.

40. Defendant's conduct, as described herein, including their current use of the mark "FIBER-SHIELD", constitutes infringement pursuant to New York State Common Law, New York State Trademark Law, and/or New York State Law of Unfair Competition as defined by and in contravention of New York Statutes and Case Law as to the affiliation, connection and association between Defendant's products and Plaintiff Fiber-Shield's products, in violation of New York State Common Law, New York State Trademark Law, and/or New York State Law of Unfair Competition.

41. As a direct and proximate result of Defendant's wrongful conduct, Defendant has caused Plaintiff Fiber-Shield irreparable harm and injury.

42. Defendant's acts of infringement and unfair competition are knowing and willful.

43. Unless Defendant is enjoined from its wrongful conduct, Plaintiff Fiber-Shield will suffer further irreparable injury and harm, for which it has no adequate remedy at law.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Fiber-Shield Industries Inc. prays and respectfully requests the following relief:

1. That Defendant Detail King LP, and all persons acting in concert or participating with it be preliminarily and permanently enjoined from:
   a. using FIBER SHIELD, or any other names, words, designations or symbols consisting of, incorporating in whole or part, or otherwise similar to the Trademark FIBER-SHIELD;
   b. otherwise infringing Plaintiff's Trademark FIBER-SHIELD;
   c. engaging in false designations of origin, false description, false advertising or false representations or otherwise engaging in unfair business or deceptive trade practices or competing unfairly with Plaintiff;
   d. any other conduct that is likely to cause confusion or to cause mistake or to deceive as to the source, affiliation, connection, or association of Detail King LP's products or services with the Plaintiff Fiber-Shield Industries Inc.;
2. That Defendant Detail King LP be ordered to pay the Plaintiff all damages suffered by reason of Defendant's trademark infringement, trademark dilution, and unfair competition as set forth in these claims (15 U.S.C. §§ 1117(a) and 1125(c)(2)).
3. That Defendant be ordered to pay Plaintiff punitive or exemplary damages as provided by law.
4. That Defendant be required to file with this Court and serve on the undersigned counsel for the Plaintiff within thirty (30) days after the entry of judgment a written report under oath setting forth in detail the manner in which Defendant has complied with the injunction ordered by this Court. (15 U.S.C § 1116.)
5. That Defendant be ordered to pay to the Plaintiff the costs of this action and reasonable attorneys' fees pursuant 15 U.S.C. §§ 1117(a) and 1125(c)(2).
6. That Plaintiff shall have such other relief as this Court may deem just and proper.

JURY DEMAND

Pursuant to Rule 38(d) of the Federal Rules of Civil Procedure, Plaintiff Fiber-Shield Industries, Inc. demands a trial by jury on all issues so triable by right.

Respectfully Submitted,
INTELLECTULAW
THE LAW OFFICES OF P.B. TUFARIELLO, P.C.

Dated: 05/12/2017

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